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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 05-245
FM Broadcast Stations) RM - 11264
(Sierra Vista, Tanque Verde, Vail,) RM - 11357
Animas, Corona de Tucson)
and Virden Arizona, and Lordsburg,)
New Mexico))

FILED/ACCEPTED

DEC - 3 2007

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Cochise Broadcasting, LLC ("Cochise"), licensee of Station KKYZ(FM), Corona de Tucson, Arizona,¹ and permittee of a new station at Lordsburg, New Mexico,² and Desert West Air Ranchers Corporation ("Desert West"), licensee of Station KRDX(FM), Vail, Arizona (together the "Joint Parties"), by their counsel, hereby oppose the Petition for Reconsideration filed by CCR-Sierra Vista, IV, LLC ("CCR") on August 30, 2007.³ CCR is seeking reconsideration of the Commission's July 31, 2007 *Report and Order* granting the Joint Parties rule making proposal over CCR's rule making proposal.⁴ CCR's Petition, however, (i) raises issues that CCR should have raised prior to the Commission's decision, (ii) relies on facts which have not previously been presented to the Commission, and (iii) repeats arguments that CCR

¹ See *Report and Order* in MB Docket No. 03-141, 19 FCC Rcd 10997 (2004).

² BNPH-20050609ABD.

³ Public Notice of CCR's Petition for Reconsideration was published on November 16, 2007. 72 Fed. Reg. 64628. Thus, this Opposition is timely.

⁴ 22 FCC Rcd 13933 (2007).

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already raised and the Commission already considered. Nevertheless, even if the Commission considers the substantive arguments raised in the Petition, CCR does not raise any issues that warrant reconsideration of the Commission's well-reasoned *Report and Order*. Thus, for both procedural and substantive reasons, the Commission must dismiss CCR's Petition for Reconsideration. In support hereof, the Joint Parties state as follows:

1. The *Report and Order* in this proceeding granted the Joint Parties' rule making proposal to (i) delete Channel 276C3 at Corona de Tucson, Arizona, allot Channel 276C3 to Tanque Verde, Arizona, and modify the license of KKYZ accordingly, (ii) delete Channel 253A at Vail, Arizona, allot Channel 253A to Corona de Tucson, Arizona, and modify the license of KRDX accordingly, (iii) delete Channel 279C1 at Lordsburg, New Mexico, allot Channel 279A to Vail, Arizona, and modify the permit accordingly, (iv) allot Channel 279C1 to Animas, New Mexico, and (v) allot Channel 228C1 to Virden, New Mexico. In doing so, the Commission dismissed CCR's mutually exclusive proposal to delete Channel 265A at Sierra Vista, Arizona, allot Channel 265A to Tanque Verde, Arizona, and modify the license of KZMK accordingly. The Commission made its reasoned decision based on its established Section 307(b) precedent.⁵ More specifically, the Commission favored the Joint Parties' proposal because it would provide a first local service to the communities of Animas and Virden, New Mexico (Priority 3) while CCR's proposal would only provide a net gain in service (Priority 4).

2. CCR raises a number of issues in its Petition that are inappropriate for reconsideration. While Section 1.429 permits the Commission to consider new facts and arguments that were previously unavailable, as discussed below, CCR fails to demonstrate that any of the facts or arguments it raises in its Petition were previously unavailable. Additionally,

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982), *recon. denied*, 56 Rad. Reg. 2d 448 (1984).

many of the arguments made by CCR are merely recycled from previous arguments made by CCR that have already been considered by the Commission. First, CCR claims that the Joint Parties' proposal will not place a 70 dBu city grade contour over Tanque Verde. Second, CCR claims that the Joint Parties' proposal will not place a 70 dBu city grade contour over Corona de Tucson. Third, CCR claims that the tower proposed by the Joint Parties at the Tanque Verde allotment site is a presumed FAA hazard. Fourth, CCR claims that Animas is not a community for allotment purposes. Fifth, CCR claims that the Joint Parties' proposal to move KKYZ to Tanque Verde is not mutually exclusive with the station's current facilities. Sixth, CCR alleges that the Joint Parties' proposal contains impermissible overlap to Mexican facilities. Finally, CCR claims that the Joint Parties' proposal for Virden violated a Commission freeze that was in place at the time the proposal was filed. Basically, CCR seems to be offering as many arguments as it can think of in the hope that something will work. However, as discussed below, none of these arguments warrant reconsideration of the Commission's well-reasoned decision in this proceeding.

3. CCR's first two arguments allege that the Joint Parties' proposal fails to provide adequate line-of-sight to Tanque Verde and Corona de Tucson. More specifically, CCR alleges that the Joint Parties' proposals are deficient due to terrain obstructions that they consider "major" which affect the level of service to the proposed communities. This is the exact argument that CCR raised and the Commission already considered. In regard to Tanque Verde, the Commission acknowledged that there was an obstruction but that this obstruction was not major because, "review of CCR's own terrain path profiles shows the maximum terrain protrusion into the line-of-sight from the theoretical radiation center to Tanque Verde is a mere

12 meters, and thus cannot be characterized as a 'major' obstruction."⁶ In its Petition, CCR attempts to dispute this conclusion by arguing that the Commission should have departed from its standard propagation methodology to calculate terrain. It then submits calculations to demonstrate that the terrain varies enough to warrant use of an alternate prediction method. However, as discussed in the attached Engineering Statement, CCR's calculations are flawed because it uses radials that do not even pass through Tanque Verde and errs in its calculation of delta-H because it utilizes terrain at a distance beyond the community of Tanque Verde.

4. In regard to line-of-sight to Corona de Tucson, the Commission could not even "identify any significant obstruction between the proposed transmitter site and Corona de Tucson."⁷ It then rejected CCR's attempt to use an alternate prediction method because "Section 73.313(e) of the rules requires that the terrain 'departs widely' from the 50-meter value incorporated into the standard methodology."⁸ Yet, CCR continues to argue that an alternate prediction method is appropriate. However, as discussed in the attached Engineering Statement, CCR's attempt to use Longley-Rice to demonstrate signal strength is rife with errors and cannot be considered in this proceeding.

5. As discussed in the Joint Parties' Reply Comments in this proceeding, even if major terrain obstructions exist (which the Joint Parties dispute), a signal of at least 70 dBu will be provided to Tanque Verde and Corona de Tucson taking into account the terrain factors. Under established case law, if, due to terrain, line-of-sight becomes an issue with a proposed allotment, the FCC requires that the proponent demonstrate that a 70 dBu signal will extend

⁶ *Report and Order* at ¶6.

⁷ *Report and Order* at ¶6.

⁸ *Id.*

beyond the proposed community.⁹ In all of these cases the line-of-sight was questioned by an opponent but the Commission determined that the proposals complied with Section 73.315 because the proponents were able to show that the proposed 70 dBu signals extended well beyond the respective communities. For example, in *Jackson*, the Commission held, citing *Vacaville*, that a reference site that cannot provide direct line-of-sight coverage is still suitable where the proponent demonstrated that the transmitted signal will exceed 70 dBu over the entire principal community. More recently in *The Dalles* and *Halls Crossroads* decisions, the Commission held that allotments were technically viable when the station, from the proposed transmitter site, would place a 70 dBu contour over the proposed community. This is the case here and, therefore, the Joint Parties' proposals are in compliance with Section 73.315 of the Commission's Rules. Thus, CCR's arguments regarding a major terrain obstruction (even if true) continue to be moot.¹⁰

6. CCR next claims that the tower proposed by the Joint Parties at the Tanque Verde allotment site is a presumed FAA hazard. This is the first time that CCR raised this alleged fact and thus this argument can be dismissed pursuant to Section 1.429(b) of the Commission's Rules. In support of this claim, CCR submits a letter from John P. Allen Airspace Consultants. It is interesting to note, however, that nowhere in this letter does the consultant state that the proposed tower is a presumed FAA hazard. Rather the letter states that "[n]otice to the FAA is required and the FAA will be required to circulate this proposal to the interested aeronautical

⁹ See *Halls Crossroads, Tennessee, et al.*, DA 05-3059, ¶10 (2005); *The Dalles* 19 FCC Rcd 10068, ¶¶16-17 (Med. Bur. 2004); *Jackson and Salyersville, Kentucky*, 17 FCC Rcd 4662, 4664 (2002); *Madison, Indiana*, 14 FCC Rcd 9518, 9519 (1999); *Vacaville and Middletown, California*, 4 FCC Rcd 8315, ¶13 (1989).

¹⁰ The Joint Parties note that it is unusual for an opponent to rely on an alternate prediction method to demonstrate non-compliance when the standard method would show compliance. Rather, the rules are normally designed to offer the alternate method to the applicant to demonstrate compliance when the standard method does not work. Here, as noted in the *Report and Order*, the standard method demonstrates compliance and thus there is no need to use an alternate method.

community prior to issuing a determination. The FAA will require marking or lighting.”¹¹ In other words, CCR’s consultant states that the proposed tower will need to go through normal FAA processing. Nowhere in the letter does the consultant conclude that such a tower would be denied by the FAA. Further, the consultant’s letter is based on a 476 foot tower. However, the Joint Parties never proposed such a tower height. A 476 foot tower is not necessary to achieve full Class C3 status from the allotment site. As discussed in the attached Engineering Statement, only a 338 foot tower is necessary. This flawed assumption defeats any conclusions made in the consultants’ letter.

7. This argument made by CCR is similar to arguments made in MM Docket No. 01-62.¹² There opponents of a rule making proposal argued that two of the towers proposed at allotment sites must be rejected because FAA regulations would likely prevent construction. The opponents demonstrated that the proposed towers would require marking and lighting and that they were in close proximity to an airport. In dismissing these claims in *Ardmore*, the Commission found that a proposal is viable if “there is a reasonable assurance that a transmitter site is available that would enable the necessary tower consistent with FAA regulations.”¹³ The fact that the towers would need to go through normal FAA processing, may require marking and lighting, and are located close to an airport, did not lead the FCC to conclude that the FAA would not approve the tower. Thus, CCR’s arguments that the proposed Tanque Verde tower will require marking or lighting and is close to an airport does not mean that the FAA will not approve the tower. Thus, this argument does not warrant reconsideration by the Commission.

¹¹ See CCR Petition at Figure 5, Page 2.

¹² See *Ardmore, Alabama, et al.*, 17 FCC Rcd 16332 (2002).

¹³ *Id.* at ¶21.

8. CCR's next claim is that Animas is not a community for allotment purposes. This is another argument that was previously raised by CCR and considered by the Commission in the *Report and Order*.¹⁴ Not satisfied with the Commission's well reasoned conclusion, CCR attempts to introduce new evidence regarding the community status of Animas. Yet, CCR fails to demonstrate that this new evidence was not previously available as required by Section 1.429(b) of the Commission's Rules. Nevertheless, none of the evidence offered by CCR comes close to disputing the fact that Animas is a community for allotment purposes. It appears that the majority of CCR's information about Animas was obtained by Holly Kuebler through conversations she had with local residents. This, however, is hearsay as CCR fails to identify Holly Kuebler or (except for Connie Rodriguez) the actual residents of Animas who gave this information. Thus, there is no way for the Joint Parties or the Commission to evaluate the factual accuracy of the information provided. In its Counterproposal and subsequent pleadings, the Joint Parties provided more than enough factual information (including pictures of the community of Animas) that demonstrates that Animas is a community for allotment purposes.¹⁵ However, because CCR continues to question the community status of Animas, attached hereto as Exhibit 1 is additional documentation to demonstrate that Animas is a community. This documentation includes a letter from the Hidalgo County Manager's Office stating that Animas is a community.

¹⁴ *Report and Order* at ¶12 ("Animas has sufficient indicia to qualify as a community for allotment purposes. Animas has its own local businesses, a post office, churches as well as its own zip code.").

¹⁵ More specifically, the Joint Parties demonstrated that Animas is located in Hidalgo County, New Mexico, and, according to the Rand McNally Road Atlas (Large Scale ed. 2005), it has a population of 200 persons. Animas has a ZIP code (88020), several businesses, a fire department, several churches and various other community indicia. The United States Postal Service operates a post office in Animas. The Animas Independent School District #6 is headquartered in Animas operating the Animas Elementary School, Animas Middle School, and Animas High School. The Animas Volunteer Fire and Rescue is a combination paid/volunteer department providing firefighting, hazard material response, EMS, extrication and search and rescue services. A number of local businesses are located in Animas including Animas Valley Clinic, Panthers Track Café, Cotton City Grocers, and Linda's Grocery and Bar.

9. CCR's fifth claim, which was considered and rejected by the Commission,¹⁶ is that the Joint Parties' proposal to move KKYZ to Tanque Verde is not mutually exclusive with the station's current facilities. However, CCR is basing mutual exclusivity on KKYZ(FM)'s facilities at Sierra Vista and not at Corona de Tucson. KKYZ(FM) is operating pursuant to an "implied STA" at Sierra Vista because the Commission has already (i) deleted Channel 269A at Sierra Vista, (ii) allotted Channel 267C3 at Corona de Tucson, and (iii) modified the license of KKYZ(FM) accordingly in MB Docket No. 03-141 and this docket is final.¹⁷ KKYZ(FM)'s facilities at Sierra Vista are no longer protected and KKYZ(FM) cannot return to its former allotment at Sierra Vista. Thus, the channel for KKYZ(FM) is allotted to Corona de Tucson and this is the proper facility to consider for mutual exclusivity purposes. Moreover, Section 1.420(i) of the Commission's Rules states that a station may change community of license "where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment." Here, the Joint Parties have demonstrated that the proposed allotment of Channel 267C3 at Tanque Verde is mutually exclusive with the present allotment of Channel 267C3 at Corona de Tucson.¹⁸

10. CCR's next claim is that the Joint Parties' proposal contains impermissible overlap to Mexican facilities at Sasabe, Sonora because the Tanque Verde allotment requires a directional antenna with a 15.85 dB front-to-back ratio. The Commission held in the *Report and*

¹⁶ *Report and Order* at ¶11.

¹⁷ See *Sierra Vista and Corona de Tucson, Arizona*, 19 FCC Rcd 10997, MB Docket No. 03-141, (Med. Bur. 2004). This rule making is final and KKYZ(FM) must cease operation at Sierra Vista by the expiration of its construction permit or sooner. See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 14 FCC Rcd 17525, n.55 (1999); *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849, 14855 n.22 (1998).

¹⁸ To the extent that CCR believes that it is improper to rely on a construction permit authorization to determine mutual exclusivity, this is contrary to existing case law. See, e.g., *Dubach, Louisiana, et al.*, 20 FCC Rcd 19495, ¶11 (2005) ("Community of License and 1.420(i) only require that the proposed reallocation ... be mutually exclusive with the underlying authorization.").

Order that this argument was premature because it had requested Mexican concurrence, which had not yet been received. If the Commission issues the permit for Tanque Verde prior to receipt of such concurrence, the permit will contain an operating condition.¹⁹ Further, CCR's argument fails to acknowledge that the Commission has previously granted permits with a front-to-back ratio as high as 17 dB.²⁰ Finally, as demonstrated in the attached Engineering Statement, there is sufficient margin in the 70 dBu coverage of Tanque Verde to allow for a 0.85 dB reduction in KKYZ's main lobe ERP. Thus, this argument also does not warrant reconsideration by the Commission.

11. CCR's final argument is that the Joint Parties' proposal for Virden violated a Commission freeze that was in place at the time. This assumption is based on CCR's flawed conclusion that the Virden proposal is not mutually exclusive with the CCR proposal or the Joint Parties' proposal. Again, this argument has already been raised by CCR and considered by the Commission.²¹ CCR's claim assumes that only technical considerations permit the inclusion of a proposal. However, proposals that assist in complying with the Commission's legal policies are relevant as well. For example, the FCC routinely permits stations that are not technically linked to a proposal to remain part of a proposal because they ensure that communities do not lose a first local service. In fact this is the case in this proceeding. Even though KRDX(FM)'s move from Vail to Corona de Tucson and the move from Lordsburg to Vail are not technically linked to the Joint Parties' Counterproposal, they are nevertheless mutually exclusive because they ensure that Corona de Tucson and Vail retain local service. Similarly, the allotment of Channel

¹⁹ *Report and Order* at ¶13.

²⁰ See BPH-20000728ADZ. This application was also for a station that was in the Mexican border zone.

²¹ See *Report and Order* at ¶12 ("As replacements for the loss of a first and second aural service ... these allotments are an integral part of the Counterproposal."

228C1 to Virden ensures that an underserved area is not created and thus are permissible for inclusion in the Joint Parties' Counterproposal.

Accordingly, for the foregoing reasons, the Commission must dismiss CCR's Petition for Reconsideration. The Petition (i) raises issues that CCR should have raised prior to the Commission's decision, (ii) relies on facts which have not previously been presented to the Commission, and (iii) repeats arguments that CCR already raised and the Commission already considered. Nevertheless, even if the Commission considers the substantive arguments raised in the Petition, CCR does not raise any issues that warrant reconsideration of the *Report and Order*.

Respectfully submitted,

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**Engineering Statement
Opposition to Petition for Reconsideration
MB Docket No. 05-245
November 2007**

This Engineering Statement has been prepared on behalf of Cochise Broadcasting, LLC, and Desert West Air Ranchers Corporation (together, "Cochise Desert") in support of an Opposition to Petition for Reconsideration filed in MB Docket No. 05-245.

The Notice of Proposed Rulemaking in MB Docket No. 05-245 was issued at the request of CCR-Sierra Vista IV, LLC ("CCR-Sierra"), and proposed the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, for use by its station KZMK. Cochise-Desert timely filed a counterproposal proposing changes at the communities of Corona de Tucson, Tanque Verde, Vail, Animas, Lordsburg, and Virden. The Commission's Report and Order, released July 31, 2007, denied CCR-Sierra's proposal, and granted Cochise-Desert's proposal in its entirety.

CCR-Sierra has subsequently filed a Petition for Reconsideration of the Commission's action in this proceeding. This Engineering Statement addresses the technical claims made in that pleading.

70 dBu Service to Tanque Verde

CCR-Sierra claims that the allocation of Channel 267C3 at Tanque Verde will not provide the required 70 dBu service level to Tanque Verde. This issue has been thoroughly addressed by this firm in earlier filings in this proceeding, and the Commission very clearly debunked CCR-Sierra's argument at Paragraph 6 in the Report and Order.

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We also reject the CCR-Sierra argument that the Cochise Desert proposal for Channel 267C3 at Tanque Verde and the Channel 253A proposal at Corona de Tucson would each fail to provide a 70 dBu signal to the respective communities of license as required by Section 73.315(a) of the rules because of a major terrain obstruction between the transmitter site and the community of license. In regard to Channel 267C3 at Tanque Verde, the proposed transmitter site is 12.5 kilometers from Tanque Verde and the purported major obstruction is 8 kilometers from the transmitter site. At maximum facilities, the radiation center would be 100 meters above average terrain ("HAAT") and 981 meters above mean sea level ("AMSL"). The referenced obstruction is 892 meters AMSL, and the community of Tanque Verde is 813 meters AMSL. Review of CCR-Sierra's own terrain path profiles shows the maximum terrain protrusion into the line-of-sight from the theoretical radiation center to Tanque Verde is a mere 12 meters, and thus cannot be characterized as a "major" obstruction. Furthermore, our engineering analysis determined that a signal in excess of 70 dBu will be provided to Tanque Verde.

CCR-Sierra questions the Commission's conclusion that "In this instance, there is no terrain variance in excess of 50 meters and therefore, no basis to depart from calculating coverage on the basis of standard methodology." CCR-Sierra goes on to list several sample radials along with their calculation of the delta-H value on each of these radials.

Curiously, CCR-Sierra lists several radials which do not even pass through the community of Tanque Verde, thereby implying that the terrain along those radials will somehow influence the provision of 70 dBu service to Tanque Verde. That is clearly not the case. Tanque Verde lies between 348 degrees True clockwise to 47 degrees True from the Channel 267C3 allotment site. Therefore, the 70 degree, 260 degree, and 330 degree radials listed by CCR-Sierra are wholly irrelevant.

Furthermore, CCR-Sierra errs in their calculation of delta-H, calculating it for the entire 10-50 kilometer span from the allotment site. The far side of Tanque Verde is no more than 19.3 kilometers from the allotment site along any given radial. The inclusion of data points beyond the far side of the community erroneously skews the delta-H calculation, rendering the result meaningless.

Hatfield & Dawson Consulting Engineers

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The Commission's decision makes clear that the purported obstruction claimed by CCR-Sierra is not significant and does not prevent the provision of 70 dBu service to Tanque Verde.

The attached map exhibit demonstrates that whether one assumes "uniform terrain" or calculates the contour as instructed by §73.313, the 70 dBu contour fully encompasses the community of Tanque Verde.

70 dBu Service to Corona de Tucson

CCR-Sierra also claims that the allotment of Channel 253A at Corona de Tucson will not provide the required 70 dBu service level to that community. Again, this issue has been thoroughly addressed earlier in this proceeding, and again the Commission very clearly debunked CCR-Sierra's argument, at Paragraph 7 in the Report and Order.

CCR-Sierra argument concerning Channel 253A at Corona de Tucson is also not persuasive. At the maximum HAAT of 100 meters, we have not been able to identify any significant obstruction between the proposed transmitter site and Corona de Tucson. In any event, using the "standard Longley Rice free space formula," CCR-Sierra asserts that a signal strength of only 62.4 dBu would be provided to Corona de Tucson. In order to use such an alternate propagation methodology, Section 73.313(e) of the rules requires that the terrain "departs widely" from the 50-meter value incorporated into the standard methodology. In this proceeding, no showing has been submitted to demonstrate the required variation. In the absence of such a submission, Section 73.313(a) must be used to calculate FM signal strength.

CCR-Sierra presents, as Figure 4 a plot of the terrain elevation from the allotment site to a location in Corona de Tucson. Accompanying that figure is a sample calculation of the Longley-Rice signal strength at the location. CCR-Sierra's submission on this point is rife with errors and inconsistencies.

- 1) While CCR-Sierra touts the "high accuracy" of its terrain data, Figure 4 specifies a site elevation of 1346 meters AMSL and a radiation center of just 1 meter AGL. In doing so,

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CCR-Sierra ignores the fact that KRDX already operates at this same location with a site elevation of 1363 meters (confirmed on the USGS 7.5 minute topo map) and a radiation center of 12 meters AGL. By choosing an artificially low site and antenna height, CCR-Sierra has prejudiced their calculation.

- 2) The terrain profile depicts a 14 km long path, while the sample calculation reflects a 16 km long path.
- 3) CCR-Sierra has specified a 5 dB clutter loss factor, which is inappropriately high for this location. Corona de Tucson is not heavily developed with large structures, nor is there any significant (i.e. large, tall, or densely-packed) vegetation. (This conclusion is based on our review of recent 2006 aerial photography of Corona de Tucson using Google Earth and terraserver.com, and field-verified by a representative of Cochise-Desert on November 27, 2007.) The only vegetation of any height in most of Corona de Tucson are mesquite trees and palo verde trees which reach a maximum height of about 20 feet (i.e. less than 30 feet), but which are scattered sparsely across the area. The 5 dB clutter loss factor applied by CCR-Sierra is therefore inappropriately high. In no case would 5 dB of loss accrue to a receive antenna located 9.1 meters above ground in an area such as this. A clutter loss factor or at most 2 dB – and more likely 1 dB – would be more appropriate for reception in Corona de Tucson, which is comprised almost entirely of short single-family dwellings set among large sections of undeveloped land with short vegetation.

The attached map exhibit (originally included in Cochise Desert's 2005 counterproposal filing) demonstrates that whether one assumes "uniform terrain" or calculates the contour as instructed by §73.313, the 70 dBu contour fully encompasses the community of Corona de Tucson.

Line of Sight over the Entire Community is not an Absolute Requirement

CCR-Sierra appears to be under the mistaken impression that any terrain obstruction which blocks the view of some portion of the proposed community of license is enough to render a proposal technically deficient under §73.315. That is simply not true.

In Rush County Broadcasting Co., 26 FCC 2d 480 (1970), the Commission stated that line-of-sight over the entire community is not an absolute requirement. Referring back to the language of §73.315(b), the Commission stated at Paragraph 7:

From a reading of this language, it is clear that line-of-sight over the entire community is not an absolute requirement. Minor deviations can be (and in past instances have been) tolerated.

In Margaret C. Schaller, 5 FCC Rcd 5329 (1990), the Chief of the Audio Services Division observed that a failure to provide line-of-sight to a community of license does not necessarily imply deficient coverage.

In the instant case, the Commission has reviewed the obstructions allegedly affecting 70 dBu service to Tanque Verde and Corona de Tucson, and reached the reasoned conclusion – as explicitly stated in the Report and Order – that there are no significant obstructions.

Tanque Verde Allotment Site re FAA

CCR-Sierra makes a claim that operation of Tanque Verde Channel 267C3 at the allotment site "is assumed to be a Hazard To Air Navigation." In support of this, CCR-Sierra provides a letter from John P. Allen Airspace Consultants, Inc., discussing the airspace use implications of a 476 foot tower at this location.

As a threshold matter, it is not necessary to use a 476 foot tower to achieve full Class C3 operation at the allotment site. The ground elevation at the site is 2870 feet or 875 meters, and

the height of average terrain is 878 meters. Thus, only a 338 foot (103 meter) tower is necessary in order to achieve full Class C3 height of 100 meters HAAT at this location.¹

It is notable that while CCR-Sierra's engineering consultant reaches the conclusion that a hypothetical (and unnecessary) 476 foot tower "is assumed to be a Hazard To Air Navigation", nowhere is that phrase used by their airspace consultant. The only conclusions reached by the airspace consultant are a) that notice to the FAA would be required, b) the FAA will be required to circularize the proposal before issuing a determination, and c) the FAA will require marking or lighting. While the airspace consultant notes that the Tucson Radar Approach Control would have to agree to an increase in the minimum vectoring altitude from 4000 feet to 4300 feet within 3 nautical miles of the site, no reason is given to believe that this change could not and would not be made.

Even were a tower proposal at this location to receive an FAA Determination of Presumed Hazard – and CCR-Sierra has produced no such document – that by itself would not mean that tower construction would ultimately be denied. The issuance of an FAA Determination of Presumed Hazard is merely one step in the process of full evaluation, an evaluation which can routinely result in a No Hazard determination. By way of concrete example, attached are the July 26, 2005 Determination of Presumed Hazard and the subsequent October 23, 2005 Determination of No Hazard to Air Navigation for a 680 foot tower near Tom Bean, Texas. That tower is now constructed and registered with ASR No. 1250923.

Nowhere does CCR-Sierra's airspace expert conclude that such a tower proposal would ultimately be denied by the FAA. Neither has CCR-Sierra provided any evidence that the FAA has expressed any objection to the construction of a 476 foot tower at the allotment site, a tower height which is in any case unnecessary.

¹ At Paragraph 6 of the Report and Order, the Commission indicates that it has calculated a radiation center of 981 meters AMSL. That is in substantial agreement with our calculation of 978 meters.

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CCR-Sierra has attempted to make an issue of the fact that the Tanque Verde 267C3 allotment site is located near Davis-Monthan Air Force Base. However, this argument holds no water because the base is extensive in area – encompassing 44 square kilometers – and the allotment site is located far from the runway. It should be further noted that while the Tanque Verde Channel 267C3 allotment site is located adjacent to the eastern end of the base, a significant portion of that part of the base is what is formally designated the 309th Aerospace Maintenance and Regeneration Group (“AMARG”), but is colloquially known as “The Boneyard”. This is not an operational portion of the base involving takeoffs and landings, but rather is an aircraft storage and maintenance facility where some 4,400 out-of-service aircraft are stored for future use, parts reclamation, or other future uses. The AMARG facility is extensive in area, encompassing 2600 acres (11 sq km). There is also significant open, apparently unused, space between the proposed allotment site and the aircraft storage area.

Attached is an annotated aerial photo which has been overlaid on USGS 7.5 minute quadrangle maps of the eastern end of Davis-Monthan AFB.² A red polygon on this map depicts the boundary of the Air Force base.³ Orange polygons on this map depict the approximate areas of the “The Boneyard”, as determined from visual inspection of the aerial photo, which in its native resolution on Google Earth clearly depicts the thousands of aircraft stored at the facility. This map also shows the location of the proposed Tanque Verde 267C3 allotment site, which is located 8.1 km from the nearest point of the Davis-Monthan AFB runway. A short paved area extending southeast from the runway is the “blast pad”. A runway blast pad is a surface adjacent to the ends of a runway, provided to reduce the erosive effect of jet blast and propeller wash. Blast pads are often not as strong as the main paved surface of the runway and are marked with yellow chevrons

² Aerial photo from Google Earth. See maps.google.com

³ Reference: Pima County GIS (Geographic Information Systems) website at www.dot.co.pima.az.us/gis/

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(clearly visible on the aerial photo in its native resolution). Planes are not allowed to taxi, take off, or land on blast pads.⁴

The Tanque Verde 267C3 allotment site is located at least five miles from the nearest runway. This is demonstrated by the fact that both the FAA's "no notice required tool"⁵ and the FCC's TOWAIR program⁶ indicate that a 200 foot tower at this site would not require notice to the FAA, or Antenna Structure Registration with the FCC. Please see the attached printouts from those programs.

Tanque Verde Power Restriction

CCR-Sierra contends that the allotment of Channel 267C3 at Tanque Verde requires a directional antenna with a 15.85 dB front-to-back ratio, and that this exceeds the 15 dB limit set forth in §73.316 of the Commission's Rules and Section 1.4.1 of the US-Mexican FM Agreement.

In fact, the 15 dB front-to-back ratio limit can be exceeded, as evidenced by the recent grant of BPH-20000728ADZ (granted 04/02/2007) for KCDX(FM) at Florence, Arizona, within the Mexican border zone. The directional antenna authorized for KCDX has a 17 dB front-to-back ratio.

Even were the 15 dB front-to-back ratio an inviolable limit, that would not be fatal to the allotment of Channel 267C3 at Tanque Verde. There is sufficient margin in the 70 dBu coverage of Tanque Verde to allow for a 0.85 dB reduction in main lobe ERP. The attached map exhibit clearly demonstrates that even if the main lobe power were restricted from 25 kW to 20.56 kW, both the circular "uniform terrain" 70 dBu contour and the calculated §73.313 70 dBu contour would encompass 100% of the community of Tanque Verde.

⁴ References: a) FAA Advisory Circular 150/5300-13 AIRPORT DESIGN, October 1, 2002.
b) "Runway." Wikipedia, The Free Encyclopedia. 26 Nov 2007, 15:39 UTC. Wikimedia Foundation, Inc. 29 Nov 2007 <<http://en.wikipedia.org/w/index.php?title=Runway&oldid=173903401>>.

⁵ <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

⁶ <http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp>

Engineering Statement

Opposition to Petition for Reconsideration

Statement of Engineer

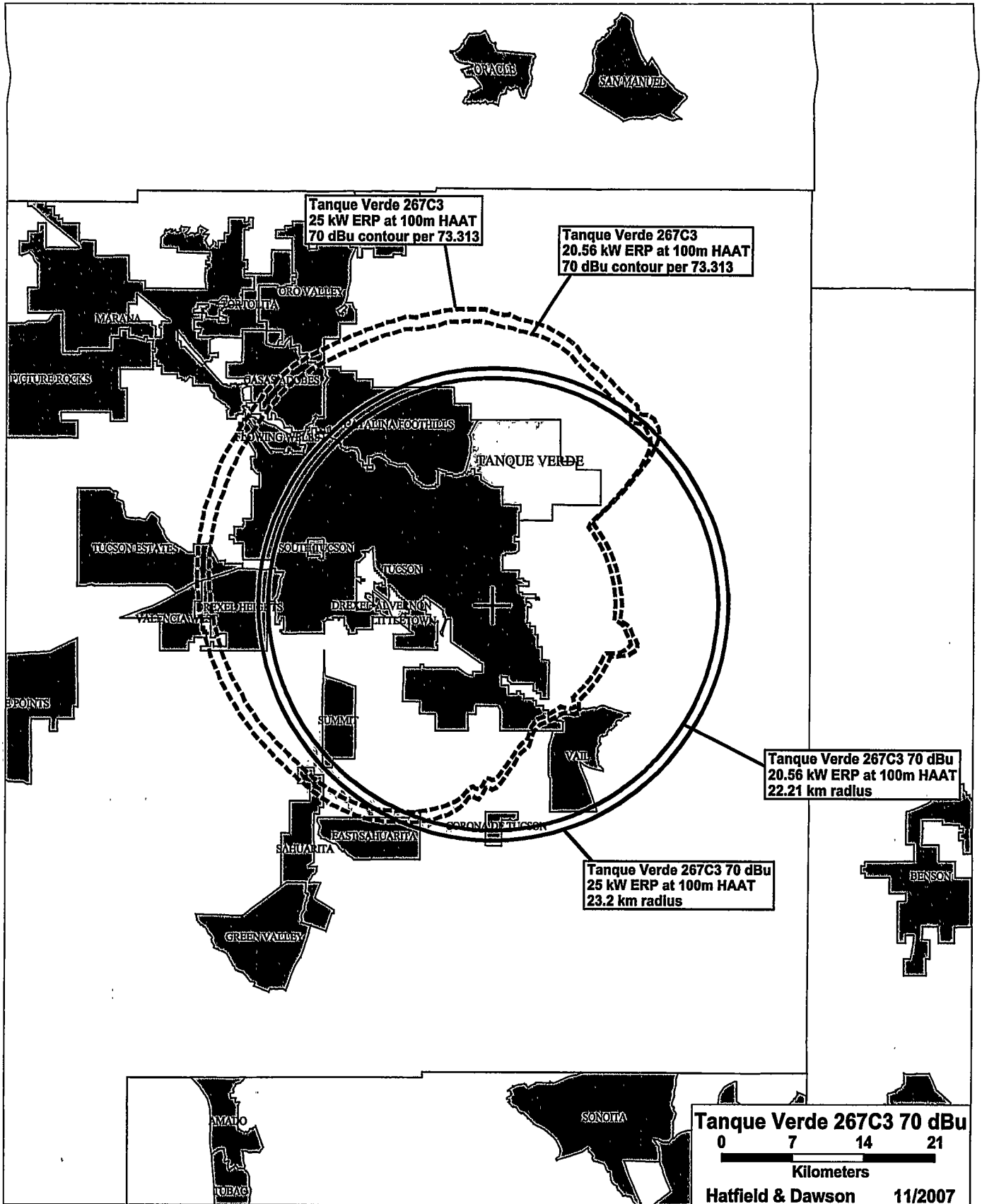
This Engineering Statement has been prepared by Erik C. Swanson under my direct supervision. I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

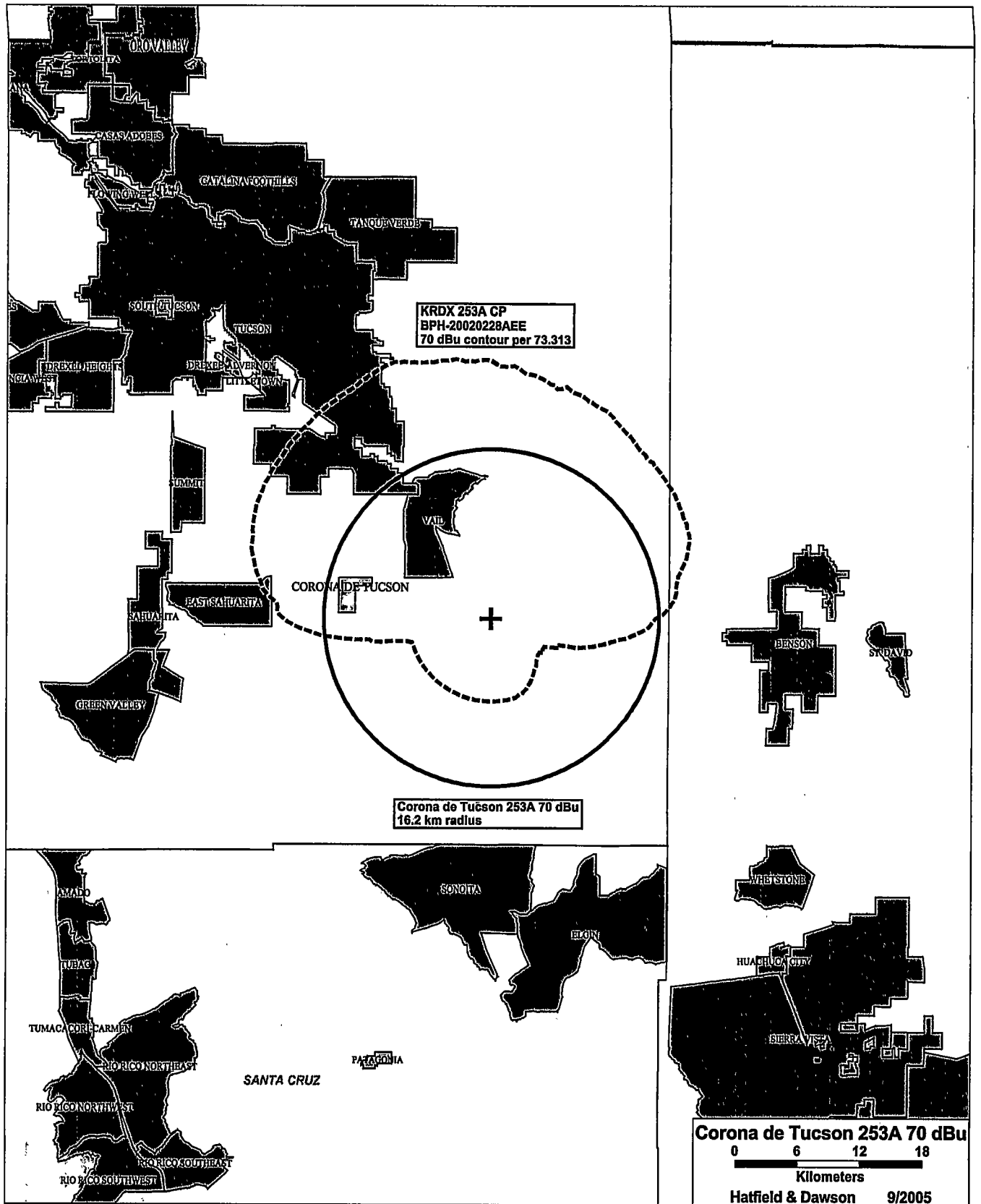
Signed this 30th day of November, 2007.



Benjamin F. Dawson III, P.E.

Erik C. Swanson







Federal Aviation Administration
Southwest Regional Office
2601 Meacham Blvd.-ASW-520
Fort Worth, TX 76137-0520

Aeronautical Study No.
2005-ASW-3005-OE

Issued Date: 07/26/2005

MARK STENNETT

NEXTMEDIA OPERATING LLC

6312 S FIDDLER'S GREEN CIR STE 360E
ENGLEWOOD, CO 80111

**** DETERMINATION OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna Tower
Location: TOM BEAN, TX
Latitude: 33-28-30.5 NAD 83
Longitude: 96-26-46.0
Heights: 680.0 feet above ground level (AGL)
1352 feet above mean sea level (AMSL)

The initial findings of this study indicated that the structure as described above would exceed obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Therefore, pending resolution of the issues described below, it is hereby determined that the structure is presumed to be a hazard to air navigation.

If the structure were reduced in height so as not to exceed 500 feet above ground level (1172 feet above mean sea level), it would not exceed obstruction standards and a favorable determination could subsequently be issued.

Further study has been initiated by the FAA.

See attachment for additional information.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

NOTE: PENDING RESOLUTION OF THE ISSUES DESCRIBED ABOVE, THE STRUCTURE IS PRESUMED TO BE A HAZARD TO AIR NAVIGATION. THIS DETERMINATION DOES NOT AUTHORIZE CONSTRUCTION OF THE STRUCTURE EVEN AT A REDUCED HEIGHT. ANY RESOLUTION OF THE ISSUES DESCRIBED ABOVE MUST BE COMMUNICATED TO THE FAA SO THAT A FAVORABLE DETERMINATION CAN SUBSEQUENTLY BE ISSUED.

If we can be of further assistance, please contact our office at (817)222-5536. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2005-ASW-3005-OE.

Signature Control No: 424138-393343

(DPH)

Bruce Beard
Specialist

Attachment(s)
Additional Information

Frequency Data

TOM BEAN, TEXAS

AGL = above ground level / AMSL = above mean sea level

ARP = airport reference point (center of the airport)

NM = nautical mile / RWY = runway

The proposed construction would be located approximately 11.36 NM southeast of the Sherman Municipal Airport ARP, Sherman, Texas. It would exceed the obstruction standards of Title 14 of the Code of Federal Regulations, part 77, as follows:

> Section 77.23(a)(1) by 180 feet - a height that exceeds more than 500 feet AGL.

A favorable determination can be issued immediately at a structure height of 500 feet AGL / 1,172 feet AMSL, once we have received notification of acceptance of the lower height. A structure height of 680 feet AGL / 1,352 feet AMSL requires the FAA to conduct a formal aeronautical study of your proposal, WHICH HAS BEGUN.

A formal aeronautical study entails the circularization of your proposal to the public for comment. The process requires a minimum of 90 to 120 days from the date that a formal study is requested before any resulting determination can be issued, so please plan accordingly. The nature of the determination cannot be prejudged prior to public circularization.

Frequency Data for ASN 2005-ASW-3005-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
97.5	0	MHz	30	KW